

**RECEIVED
CENTRAL FAX CENTER**

JAN 12 2009

PTO/SB/21 (12-97)

Approved for use through 9/30/00. OMB 0651-0031

Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM <small>(to be used for all correspondence after initial filing)</small>	Application Number	10/581,898
	Confirmation Number	
	Filing Date	with an effective filing date of November 30, 2004
	First Named Inventor	Gerd HEXELS
	Group Art Unit	3765
Total No. of Pages in this Submission: 4	Examiner Name	Alissa L. HOEY Fax: (571) 273-8300
	Attorney Docket Number	LORWER P45AUS

ENCLOSURES (check all that apply)

☐ Fee Transmittal Form

☐ Fee attached - Check \$

☒ Amendment/Response - 3 pgs.

☐ After Final

☐ Affidavits/declaration(s)

☐ Extension of Time Request
(in Duplicate)

☐ Express Abandonment Request

☐ Information Disclosure Stmt

☐ Certified Copy of Priority
Document(s)

☐ Response to Missing Part/s
Incomplete Application

☐ Response to Missing Parts
under 37 CFR 1.52 or 1.53

☐ Assignment papers
(for an Application)

☐ Drawing(s)

☐ Licensing-related Papers

☐ Petition Routing Slip (PTO/SB/69)
and Accompanying Petition
(DELETED - no longer useful)

☐ To Convert a Provisional Petition

☐ Power of Attorney, Revocation
Change of Correspondence Address

☐ Terminal Disclaimer

☐ Small Entity Statement

☐ Request for Refund

☐ After Allowance Communication
to Group

☐ Appeal Communication to Board
of Appeals and Interferences

☐ Appeal Communication to Group
(Appeal Notice, Brief, Reply Brief)

☐ Proprietary Information

☐ Status Letter

☐ Additional Enclosure(s)
(please identify below):

REMARKS

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual Name

Michael J. Bujold
DAVIS & BUJOLD, P.L.L.C.Reg. No. 32,018
CUSTOMER NO. 020210

Signature

Date

January 12, 2009

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on January 12, 2009

Signature

Date: January 12, 2009 ()

RECEIVED
CENTRAL FAX CENTER
JAN 12 2009

12Jan09

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	Gerd HEXELS
Serial no.	:	10/581,898
Confirmation No.	:	
Filed	:	with an effective filing date of November 30, 2004
For	:	PROTECTIVE CLOTHING FOR THE LOWER
	:	PART OF THE LEG
Group Art Unit	:	3765
Examiner	:	Alissa L. HOEY
Docket	:	LORWER P45AUS

The Commissioner for Patents
U.S. Patent & Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450

RESPONSE

Dear Sir:

[XXX] NO FEES ARE PAYABLE WITH RESPECT TO THIS RESPONSE.

In response to the official action mailed October 21, 2008, please enter the following before reconsideration of this application.

REMARKS

Claim 57 is rejected, under 35 U.S.C. § 102(a), as being anticipated by Von Blucher '673 (DE 103 47 673) while claims 37, 41-42, 45-50, 53-55, 58-61, 64 and 71 are rejected, under 35 U.S.C. § 103(a), as being unpatentable over Von Blucher '673 in view of Pacanowsky et al. '447 (US 4,809,447). The Applicant acknowledges and respectfully traverses the raised anticipatory and obviousness rejections in view of the following remarks.

It is respectfully submitted that Von Blucher '673 is not a proper prior art reference to be cited against the claims of the above identified application. The Manual of Patent Examining Procedure states at 706.02(a)(II)(C) "[f]or 35 U.S.C. 102(a) to apply, the reference must have a publication date earlier in time than the effective filing date of the application, and must not be applicant's own work."

It is to be noted that the Von Blucher '673 application was filed in Germany on October 9, 2003. However, it is respectfully submitted that Von Blucher '673 can only be used as a prior art reference either as of publication date or patent date. Von Blucher '673 was patented on September 6, 2005 while its publication date is believed to have been approximately 18 months after the German filing date, e.g., sometime on or after April 9, 2005. Therefore, It is respectfully submitted that the earliest effective date for the Von Blucher '673 reference is sometime around the April 9, 2005 publication date of that German Patent which is after the November 30, 2004 effective filing date of the above identified application.